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Supreme Court of the United States

OCTOBER TERM, 1956

No. 405

FRANK MEKOLICHICK, JR., and DAVID CHARLES WENNER, Petitioners

v.

UNITED STATES OF AMERICA

ON JOINT PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners' Motion for Leave to File Out of Time a Petition for Rehearing And Petition for Rehearing

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INDEX

Subject Index

	PAGE
Motion for leave to file out of time a petition for rehearing	1
Conclusion	2
Certificate	2
Petition for rehearing	3
Ground	3
Conclusion	3
Certificate	4

Cases Cited

Clark v. Manufacturers Trust Co. 337 U. S. 953, 338 U. S. 241, 242	2
Land v. Dollar 341 U. S. 737, 738	2
Steele v. United States — F. 2d — (1st Cir. Dec. 21, 1956)	1, 3
Stone v. White 300 U. S. 643	2
United States v. Mekolichick 234 F. 2d 71 (3rd Cir. June 1, 1956)	2
Zap v. United States 330 U. S. 800	2

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TO THE SUPREME COURT OF THE UNITED STATES:

May it please the Court, Mekolichick and Wenner, the petitioners, present their motion for leave to file out of time a petition for rehearing so that the petition for writ of certiorari, which was denied on November 13, 1956, can be reconsidered before jurisdiction is lost by expiration of the present term.

Intervention of the decision by the United States Court of Appeals for the First Circuit in *Steele* v. *United States*, No. 5137, December 21, 1956, which is in direct conflict with

the holding of the court below (234 F. 2d 71 (June 1, 1956)), is the basis for the petition for rehearing.

This Court has the authority to grant this motion and the attached petition for rehearing because of the intervention of the new decision by the United States Court of Appeals for the First Circuit.—*Clark* v. *Manufacturers Trust Co.*, 337 U. S. 953, 338 U. S. 241, 242; *Stone* v. *White*, 300 U. S. 643; *Zap* v. *United States*, 330 U. S. 800; *Land* v. *Dollar*, 341 U. S. 737, 738.

CONCLUSION

WHEREFORE the petitioners pray that this Court exercise its discretion and grant petitioners leave to file the attached petition for rehearing and that the Court, upon consideration of the petition, grant a rehearing, vacate the order denying the petition for writ of certiorari and grant the writ as prayed for in the petition.

FRANK MEKOLICHICK, JR., and
DAVID CHARLES WENNER, Petitioners

By

HAYDEN C. COVINGTON
Counsel for Petitioners

CERTIFICATE

The undersigned counsel for petitioners hereby certifies that the foregoing motion for leave to file the petition for rehearing is prepared and filed in good faith so that justice may be done, and not for purpose of delay.

HAYDEN C. COVINGTON
Counsel for Petitioners

December, 1956.

PETITION FOR REHEARING

Come now the petitioners, with leave of Court first having been asked and obtained, and present their petition for rehearing, asking that the order denying the petition for writ of certiorari be vacated and that the petition for writ of certiorari be granted.

GROUND

The Court erred in failing to grant the petition for writ of certiorari for the reasons set forth in the petition, to which reference is here made; and, for the further reason that since the denial of the writ of certiorari in these cases the United States Court of Appeals for the First Circuit has rendered a decision that is in conflict with the decision by the court below in these two cases.—*Steele* v. *United States*, No. 5137, Dec. 21, 1956.

CONCLUSION

WHEREFORE petitioners pray that the order heretofore entered herein, denying certiorari, be set aside and held for naught, and that this petition be granted, and that upon a consideration of the petition for writ of certiorari and this petition for rehearing the Court enter an order granting the writ of certiorari prayed for in the petition for writ of certiorari. Petitioners pray for such other relief to which they may show themselves justly entitled in the premises.

FRANK MEKOLICHICK, JR., and
DAVID CHARLES WENNER, Petitioners

By

HAYDEN C. COVINGTON

Counsel for Petitioners

CERTIFICATE

The undersigned counsel for petitioners hereby certifies that the foregoing petition for rehearing is prepared and filed in good faith so that justice may be done, and not for the purpose of delay.

HAYDEN C. COVINGTON

Counsel for Petitioners

December, 1956.